

Brussels, 16 July 2003  
Doc. No: 03- 4598D  
Ref. No: SAM030.95010



**Subject: Notification of State aid in the form of regionally differentiated social security contributions (transition period for zones 3 and 4) and direct transport aid scheme. Decision to open the formal investigation procedure**

Dear Sir or Madam,

By letter from the Mission of Norway to the European Union dated 26 March 2003 (Doc. No:03-1846 A), forwarding a letter from the Ministry of Trade and Industry dated 25 March 2003, a letter from the Ministry of Finance dated 25 March 2003 and a letter from the Ministry of Local Government and Regional Development dated 25 March 2003, all received and registered by the Authority on 26 March 2003, the Norwegian authorities notified a transitional period for the regionally differentiated social security contributions in certain geographical areas (zones 3 and 4) and a new national direct transport aid scheme. The Norwegian authorities also informed the Authority that they would notify later, in a separate letter, a continuation of the present scheme in zone 5 (Nord-Troms and Finnmark). Furthermore, the Norwegian authorities informed the Authority that they have approached the other EFTA States to reach a common accord, pursuant to Article 1(2) subparagraph 3 of Protocol 3 to the Surveillance and Court Agreement, in order to retain the current scheme in this zone.

By letter from the Mission of Norway to the European Union dated 15 April 2003 (Doc. No:03-2467 A), forwarding a letter from the Ministry of Trade and Industry dated 10 April 2003 and a letter from the Ministry of Finance dated 10 April 2003, all received and registered by the Authority on 16 April 2003, the Norwegian authorities notified a permanent continuation of regionally differentiated social security contributions in Nord-Troms and Finnmark (zone 5).

By letter dated 16 May 2003 (Doc. No:03-2951 D), the Authority acknowledged the receipt of the above letters and requested additional information. The Competition and State Aid Directorate also expressed doubts about the compatibility of the notified aid measures.

By letter from the Mission of Norway to the European Union dated 10 June 2003 (Doc. No:03-3707 A), forwarding a letter from the Ministry of Finance dated 5 June 2003, both received and registered by the Authority on 11 June 2003, the Norwegian authorities submitted additional comments and information.

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Rue Archimède 17,  
1000 Brussels

By letter from the Mission of Norway to the European Union dated 19 June 2003 (Doc. No:03-3976 A), forwarding a letter from the Ministry of Trade and Industry dated 10 June 2003, both received and registered by the Authority on 20 June 2003, the Norwegian authorities submitted a survey of extra transport costs in the proposed area for transport aid<sup>1</sup>.

By letter from the Norwegian Ambassador to the European Union dated 4 July 2003 (Doc. No:03-4403 A), the Norwegian authorities, as a result of the decision of the Standing Committee of the EFTA States (No 2/2003/SC), withdrew the notification of the continuation of the differentiated social security contributions in zone 5.

The Authority has doubts as to whether the notified transition period in zones 3 and 4 and the notified new direct transport aid scheme are compatible with the functioning of the EEA Agreement. Consequently, and in accordance with Chapter 5.2 of the State Aid Guidelines, the Authority is obliged to open the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement.

For further details, please find enclosed a copy of the Authority's decision.

Your Government is asked to submit its comments as well as any information relevant to the assessment of the aid within two months from the date of receipt of this letter. The Authority may need to ask for additional details after analysing the information provided.

The Authority, by means of publication of the decision in the EEA Section of the Official Journal of the European Union and the EEA Supplement thereto, gives notice to the other EEA States and third parties to submit, within one month of publication, their comments on the measures in question. The comments will be communicated to the Norwegian Government.

If this decision contains confidential information which should not be published, please inform the Authority within fifteen working days from the date of receipt. If the Authority does not receive a reasoned request by the stipulated deadline, it will be deemed that you agree to the publication of the full text of the decision.

Yours faithfully,

Hannes Hafstein  
College Member

Enclosure

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<sup>1</sup> "Interju av industribedrifter i aktuelle transportstøttesoner og i referansesoner. Transportøkonomisk institutt. Arbeidsdokument av 04.06.2003".

Doc. No: 03- 4475 I  
Ref. No: SAM030.95010  
Dec. No.: 141/03/COL



EFTA SURVEILLANCE  
AUTHORITY

## EFTA SURVEILLANCE AUTHORITY DECISION

OF 16 JULY 2003

TO OPEN THE FORMAL INVESTIGATION PROCEDURE PROVIDED FOR IN  
ARTICLE 1(2) OF PROTOCOL 3 TO THE SURVEILLANCE AND COURT  
AGREEMENT WITH REGARD TO STATE AID IN THE FORM OF  
REGIONALLY DIFFERENTIATED SOCIAL  
SECURITY CONTRIBUTIONS AND  
DIRECT TRANSPORT AID

(NORWAY)

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area<sup>1</sup>, in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD TO the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice<sup>2</sup>, in particular to Article 24 and Article 1 of Protocol 3 thereof,

HAVING REGARD TO the Authority's Guidelines<sup>3</sup> on the application and interpretation of Articles 61 and 62 of the EEA Agreement,

WHEREAS:

### I. FACTS

#### 1. Notification

By letter from the Mission of Norway to the European Union dated 26 March 2003 (Doc. No:03-1846 A), forwarding a letter from the Ministry of Trade and Industry

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<sup>1</sup> Hereinafter referred to as the EEA Agreement.

<sup>2</sup> Hereinafter referred to as the Surveillance and Court Agreement.

<sup>3</sup> Procedural and Substantive Rules in the Field of State Aid (State Aid Guidelines), adopted and issued by the EFTA Surveillance Authority on 19 January 1994. Published in Official Journal L 231, 03.09.1994. The Guidelines were last amended 18 December 2002 (not yet published).

dated 25 March 2003, a letter from the Ministry of Finance dated 25 March 2003, and a letter from the Ministry of Local Government and Regional Development dated 25 March 2003, all received and registered by the Authority on 26 March 2003, the Norwegian authorities notified a transitional period for the regionally differentiated social security contributions in certain geographical areas (zones 3 and 4) and a new national direct transport aid scheme. The Norwegian authorities also informed the Authority that they would notify later, in a separate letter, a continuation of the present scheme in zone 5 (Nord-Troms and Finnmark). Furthermore, the Norwegian authorities informed the Authority that they have approached the other EFTA States in order to reach a common accord, pursuant to Article 1(2) subparagraph 3 of Protocol 3 to the Surveillance and Court Agreement, in order to retain the current scheme in this zone.

By letter from the Mission of Norway to the European Union dated 15 April 2003 (Doc. No:03-2467 A), forwarding a letter from the Ministry of Trade and Industry dated 10 April 2003 and a letter from the Ministry of Finance dated 10 April 2003, all received and registered by the Authority on 16 April 2003, the Norwegian authorities notified a continuation of regionally differentiated social security contributions in Nord-Troms and Finnmark (zone 5) without any specified time limits.

By letter dated 16 May 2003 (Doc. No:03-2951 D), the Authority acknowledged the receipt of the above letters and requested additional information. The Competition and State Aid Directorate also expressed doubts about the compatibility of the notified aid measures.

By letter from the Mission of Norway to the European Union dated 10 June 2003 (Doc. No:03-3707 A), forwarding a letter from the Ministry of Finance dated 5 June 2003, both received and registered by the Authority on 11 June 2003, the Norwegian authorities submitted additional comments and information.

By letter from the Mission of Norway to the European Union dated 19 June 2003 (Doc. No:03-3976 A), forwarding a letter from the Ministry of Trade and Industry dated 10 June 2003, both received and registered by the Authority on 20 June 2003, the Norwegian authorities submitted a survey of extra transport costs in the proposed area for transport aid<sup>4</sup>.

By letter from the Norwegian Ambassador to the European Union dated 4 July 2003 (Doc. No:03-4403 A), the Norwegian authorities withdrew the notification of the continuation of the differentiated social security contributions in zone 5, as a result of the decision of the Standing Committee of the EFTA States of 1 July 2003 (No 2/2003/SC). The Standing Committee decided that the present scheme in zone 5 is compatible with the functioning of the EEA Agreement due to the exceptional circumstances in this zone.

## **2. Background**

On 22 September 1999 the Authority approved a proposal from the Norwegian authorities concerning new regulations in the regionally differentiated social security

<sup>4</sup> "Interju av industribedrifter i aktuelle transportstøttesoner og i referansesoner. Transportøkonomisk institutt. Arbeidsdokument av 04.06.2003".

contributions scheme<sup>5</sup>. The approval was limited in time, not going beyond 31 December 2003.

On 21 December 2000 the European Commission took a negative decision concerning a reduced social contributions aid scheme notified by Sweden<sup>6</sup>. In the decision it is stated that: *"The amount of aid granted under the scheme to an eligible undertaking does not bear any relation to the additional transport costs actually incurred by that particular undertaking. The aid granted depends on the size of its wage bill, which depends in turn on the number of persons employed and their average salaries. It can therefore scarcely be argued that the aid is 'objectively quantifiable in advance on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio'. The implication is also that it cannot be excluded that there is overcompensation of the additional transport costs in at least some cases"*.

In the decision of 21 December 2000 it is also pointed out that Norway, by letter dated 27 July 2000, submitted comments to the decision to initiate the formal investigation procedure and that the Norwegian authorities confirmed that Norway operates a scheme that is similar to the Swedish scheme.

Sweden was informed about the decision to initiate the formal investigation procedure by letter dated 4 April 2000. The decision to initiate the formal investigation procedure was published on 1 July 2000<sup>7</sup>. The negative final decision was published on 14 September 2001 (see footnote 6).

In the light of the Swedish decision, the Norwegian system was thereafter discussed at several meetings between the Norwegian authorities and the Authority, as well as between the Authority and the European Commission.

By letter from the Authority dated 29 November 2001 (Doc. No: 01-9557 D), the Norwegian authorities were *i.a.* informed that the Authority would start an assessment of the Norwegian system aimed at formulating a proposal for appropriate measures so that equal conditions of competition within the territory covered by the EEA Agreement are re-established.

The Authority initiated a formal review of the Norwegian system by letter to the Norwegian authorities dated 4 June 2002 (Doc. No: 02-4189 D). In this letter the Authority expressed its preliminary view that the Norwegian system of regionally differentiated social security contributions might no longer be compatible with the EEA Agreement.

In the Authority's decision of 25 September 2002<sup>8</sup> to propose appropriate measures, it was concluded that the present regionally differentiated social security contributions scheme does not qualify for the derogation provided for under Article 61(3)(c) EEA. The amount of aid granted under the present scheme does not bear any relation to the additional transport costs actually incurred by a particular undertaking and is not calculated in line with the provisions of Annex XI of the State Aid Guidelines. In the operative part of the Decision it is *i.a.* stated:

<sup>5</sup> Dec. No: 228/99/COL. OJ C 3, 06.01.2000, p.3, and EEA Supplement No 1, 06.01.2000.

<sup>6</sup> OJ L 244, 14.09.2001, p.32.

<sup>7</sup> OJ C 184, 01.07.2000, p.10.

<sup>8</sup> Dec. No. 172/02/C OL.

1. *"The EFTA Surveillance Authority proposes to Norway, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the following appropriate measures with regard to the State aid involved in the system of regionally differentiated social security tax ("Geografisk differensiert arbeids giveravgift"):*
  - a) *The Norwegian authorities shall take any legislative, administrative and other measures necessary to eliminate any State aid within the meaning of Article 61(1) EEA resulting from the system of regionally differentiated social security tax, or to render such aid compatible with Article 61 of the EEA Agreement,*
  - b) *The Norwegian authorities shall eliminate any such aid or render it compatible with effect from 1.1.2004 unless the Authority agrees to a later date should that be considered objectively necessary and justified by the Authority in order to allow an appropriate transition for the undertakings in question to the adjusted situation; and*
  - c) *The Norwegian authorities shall communicate to the Authority the relevant measures adjusting the aid scheme as soon as possible and in any event no later than 25 March 2003.*
  
2. *The Norwegian authorities are requested to inform the Authority in writing within one month from receipt of this proposal that they accept, pursuant to Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, in its entirety this proposal for appropriate measures."*

By letter dated 29 October 2002 from the Mission of Norway to the European Union, received and registered by the Authority on 31 October 2002 (Doc. No: 02-7855 A), the Norwegian authorities accepted the appropriate measures.

### **3. Description of the proposed measures**

#### **3.1 Notification of a transitional period in zones 3 and 4**

For the purpose of the social security contributions Norway is divided into five geographical zones. The highest tax rate is 14.1 per cent in zone 1 that covers some 75 per cent of the population. In zone 5 (Nord-Troms and Finnmark) that covers the very northernmost part of the country, the rate is zero. An overview of the geographical zones and tax rates is given in Annex 1 to the decision of 25 September 2002 (Dec. No: 172/02/COL).

By letter dated 25 March 2003 from the Ministry of Finance, the Norwegian authorities notified a transitional arrangement for zones 3 and 4, and presented the following table concerning the escalation of the social security contributions rates:

Table 1<sup>9</sup>

	Current rates	Rates 2004	Rates 2005	Rates 2006	Rates 2007
Zone 1	14,1	14,1	14,1	14,1	14,1
Zone 2	10,6	14,1	14,1	14,1	14,1
Zone 3	6,4	8,3	10,2	12,1	14,1
Zone 4	5,1	7,3	9,5	11,7	14,1

The increased rates in zones II-IV from 2004 onwards will apply only to aid exceeding the *de minimis* amount.

The proposal implies a transitional period over 3 years for zone 3 and 4 until the full rate of 14,1 per cent is reached in 2007.

The arguments put forward for such a transitional arrangement are firstly that, in light of the chronological development of the case, the Norwegian authorities are of the opinion that they received ‘no clear signals’ until late autumn 2002 that the system as such had to be abolished. The Norwegian authorities state that they did not find it professionally or politically advisable to request the undertakings to adapt to a situation with no differentiation (beyond *de minimis*), before they saw the contours of a new system. In this respect the Norwegian authorities refer to informal discussions that took place in the wake of the European Commission’s decision on the Swedish system of reduced social security contributions.

Secondly, it is argued that the economic effect of abolishing the system as from 2004 will raise significant and very serious difficulties, not only for individual firms, but for all firms (exceeding the *de minimis* threshold) and thus, for the employment situation in the whole area. It is estimated that, if the system had been prolonged as from 2004, the total gross tax relief to the private sector in the zones II, III and IV, would be NOK 4.270 million (some EUR 520 million).

A report from an independent committee, ‘*Effektutvalget*’, presents various calculations of possible macro effects of abolishing the regional differentiation of the tax. Provided that there are no incidence effects on wages and product prices, the estimates indicate an employment reduction in the private sector of 15.400 persons in zone IV and 2.900 persons in zone III as a direct effect of the increase in total wage costs. This would represent an isolated reduction of employment in the private sector in these regions of 15,5 per cent (13,8 per cent in zone III, 15,8 per cent in zone IV). The corresponding reduction in total employment in these regions would be 7,5 per cent in zone III and 8,5 per cent in zone IV.

The Norwegian authorities also present calculations of the estimated effects of a *de minimis* scheme. The Norwegian authorities have estimated the total number of employees in the private sector for which a *de minimis* scheme would not apply. (Reduced social security contributions could be applied to wages for a limited number of employees in each firm, ensuring that the tax benefits do not exceed the *de minimis* threshold of EUR 100.000 over a three-year period.) They conclude that the share of normal man-labour years above *de minimis* in zone III and IV are 43 per cent and 55

<sup>9</sup> The notification concerning zone 5, where the current rate is zero, is described in point 3.3 below.

per cent respectively, and that the reduction in employment (given the introduction of a *de minimis* scheme) would be 3,2 per cent in zone III and 4,7 per cent in zone IV.

In their notification the Norwegian authorities point out that in the long run increased taxes may be shifted to a various degree to wage earners and consumers. It is stressed that such a process takes a long time and it is therefore necessary to have a rather long transitional period as the immediate effect of a rise in taxes would represent a corresponding increase in employers' wage costs.

The Norwegian authorities refer as well to the low profitability for enterprises in zones 3 and 4. It is stated that a (full) tax increase, taking the *de minimis* possibility into account, would for the year 2001 correspond to about 24 per cent of total operating profit for companies in zone 3 and, correspondingly, almost 40 per cent in zone 4.

The Norwegian authorities also present calculations of the effect of introducing a direct transport aid scheme. As transport aid will be granted only for extra costs for transport of goods, it is maintained that such a measure will be limited only to a small part of the affected enterprises. The conclusion is that given a total budget for the new scheme of NOK 150 million after the transition period, the new scheme will compensate for 10 per cent of the enterprises' losses.

By letter dated 16 May 2003, the Authority noted that the notified transition period is three years for both zone 3 and 4, and therefore that the relative increases per year are higher in zone 4 than in zone 3. The Authority therefore stated that it would appreciate receiving arguments for why enterprises in zone 3 need the same transition period as those in zone 4, in spite of facing a smaller increase in the tax burden. The Authority also indicated that it would appreciate receiving additional comments or calculations demonstrating the effects of transition periods of one and two years, respectively, for each of the zones, and compared to the notified three year period.

By letter dated 5 June 2003, the Ministry of Finance submits additional comments. The Ministry states that without a transitional period, the increase in the social security tax corresponds to an immediate increase in the firms' labour costs of 8.6 and 7.2 per cent in zones 3 and 4, respectively (as soon as the *de minimis* threshold is reached). Assuming general wage increases as forecast by the authorities, no transition period would imply an increase in labour costs for enterprises in zones 3 and 4 in 2004 almost three times higher than the normally expected increase in such costs (*de minimis* effect not taken into consideration). A transitional period of three years would, according to the Ministry, allow for a higher degree of wage adjustment to take place before the full rate is applied, postpone the rise in costs to firms and reduce the number of closures and jobs lost as a consequence of the increase in the tax rate. As to why enterprises in zone 3 need the same transitional period as enterprises in zone 4, the Ministry states that three years is a very short period in both zones, that the relative differences in the increases between the zones are very small and that it would be unfortunate with a differentiation in the transitional period.

### **3.2 Notification of a new direct transport aid scheme**

By letter dated 25 March 2003 from the Ministry of Finance and a letter dated 25 March 2003 from the Ministry of Local Government and Regional Development, the



Norwegian authorities notified the Authority of a new national direct transport aid scheme.

The following counties/municipalities are proposed as eligible for national transport aid:

- Troms: Harstad, Tromsø, Kvæfjord, Skånland, Bjarkøy, Ibestad, Gratangen, Lavangen, Bardu, Salangen, Målselv, Sørreisa, Dyrøy, Tranøy, Torsken, Berg, Lervik and Balsfjord,
- Nordland: all municipalities,
- Nord-Trøndelag: Leka, Nærøy, Vikna, Flatanger, Fosnes, Overhalla, Høylandet, Grong, Namsos, Namsskogan, Røyrvik, Lierne, Snåsa, Inderøy, Namdalseid, Verran, Mosvik, Verdal, Leksvik, Meråker and Steinkjer.
- Sør-Trøndelag: Hemne, Snillfjord, Hitra, Frøya, Ørland, Agdenes, Rissa, Bjugn, Åfjord, Roan, Osen, Oppdal, Rennebu, Meldal, Røros, Holtålen, Midtre Gauldal, Selbu and Tydal.
- Møre og Romsdal: Kristiansund, Vanylven, Sande, Herøy, Ulstein, Hareid, Norddal, Stranda, Stordal, Rauma, Nesset, Midsund, Sandøy, Aukra, Eide, Averøy, Frei, Gjemnes, Tingvoll, Sunndal, Surnadal, Rindal, Aure, Halså, Tustna and Smøla.
- Sogn og Fjordane: Gulen, Solund, Hyllestad, Høyanger, Vik, Balestrand, Leikanger, Sogndal, Aurland, Lærdal, Årdal, Luster, Askvoll, Fjaler, Gaular, Jølster, Bremanger, Vågsøy, Selje, Eid, Hornindal, Gloppen and Stryn.

The Norwegian authorities state that the designation of the area for regional transport aid is based on Annex XI of the State Aid Guidelines, which establishes criteria for granting aid to offset additional transport costs in low population density areas, i.e. regions with less than 12.5 inhabitants per square kilometre. The notification includes parts of Sør-Trøndelag and Møre og Romsdal. While these included parts have low population density, the two counties are as such not low population density counties. The Norwegian authorities argue, however, that this inclusion is justified according to Annex XI of the State Aid Guidelines as the population coverage of the new proposed area is 16.01 per cent of the total population in Norway compared to the current population coverage of 23.55 per cent for the existing indirect transport aid scheme (the regionally differentiated social security contributions).

According to the notification, aid may only be given in respect of the extra costs of transporting goods inside the national territory, calculated on the basis of the most direct and economical mode of transport between the place of production and processing and the nearest commercial outlet.

The highest aid intensity priority is given to Troms, Nordland and Nord-Trøndelag (zone 1) while Sør-Trøndelag, Møre og Romsdal and Sogn og Fjordane (zone 2) is subject to lower aid intensity. The aid intensity will be differentiated according to transport distance (minimum 350 km) and according to geographical zone. The table below shows the differentiation in aid intensities.

Table 2: Aid intensity

Transport distances in kilometres	Zone 1	Zone 2
350 – 700	30 per cent	20 per cent
701 -	40 per cent	30 per cent

The Norwegian authorities state that they will ensure that firms are not being overcompensated. If undertakings benefit from a reduced social security tax in the same period, the advantages of this tax reduction will be deducted from the transport aid grant calculated according to table 2. Furthermore, the undertakings will not receive more in transport aid from the new transport aid scheme and reduced social security contributions, altogether, than the amount equivalent to what they would have received through the existing differentiation of social security contributions.

By letter dated 16 May 2003, the Authority requested additional information. The Authority noted that four of the municipalities proposed covered by the new direct transport aid scheme are outside the regional aid map (Herøy, Ulstein, Hareid and Aukra). The Authority expressed doubts about the Norwegian authorities' interpretation of the State Aid Guidelines. If low population areas in Sør-Trøndelag and Møre og Romsdal shall be included in the area eligible for transport aid, these areas must, in the Authority's view, replace areas/municipalities from the nine other low population density counties (Troms, Nordland, Nord-Trøndelag, Sogn og Fjordane, Aust-Agder, Telemark Hedmark and Oppland). The Authority also requested a copy of a report documenting additional transport costs.

By letter dated 5 June 2003, the Ministry of Finance submitted additional information. The Ministry argues that the regional state aid map is notified for investment aid and not for handicaps due to extra transport costs and that companies in those four municipalities face permanent disadvantages, as they are islands without any road connection with the mainland. The Norwegian Government is of the opinion that Annex XI of the State Aid Guidelines allows for a certain flexibility in the selection of areas that are eligible for transport aid. In the light of the arguments above, the Government therefore maintains the notification of the transport aid map as proposed in the letter dated 25 March 2003, including the four municipalities Herøy, Hareid, Ulstein and Aukra.

As regards the areas that qualify for regional transport aid, the Norwegian authorities point out that in their view the conditions for replacement of areas/municipalities are in accordance with the provisions of Annex XI. The Norwegian authorities argue that the total population of the municipalities within the regional state aid map in the counties of the low population density counties of Hedmark, Oppland, Telemark and Aust-Agder is 209.593 inhabitants. These areas are not included in the notification while the population of the municipalities in Sør-Trøndelag and Møre og Romsdal, included in the proposed transport aid scheme, is 179.792 inhabitants.

By letter dated 10 June 2003, the Ministry of Trade and Industry submitted a survey from the Institute of Transport Economics (TØI)<sup>10</sup> on the extra transport costs in the proposed area for transport aid. The survey is based on interviews with 33 enterprises divided into 6 samples (geographic areas). The conclusion from TØI is that sample 1 (the three northernmost counties) and sample 2 (counties in Western-Norway) have on average transport costs per man-year – in total and for transport distances above 350 kilometre – that are significantly above comparable cost figures for the reference area (Oslo and surrounding areas).

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<sup>10</sup> Interju av industribedrifter i aktuelle transportstøttesoner og i referansesoner. Arbeidsdokument av 4.6.2003.

In the meeting on 26 June 2003 in Oslo, the representatives from the Authority expressed the view that the survey from TØI does not to a sufficient degree prove that additional transport costs exist in the geographical areas in southern Norway proposed as being eligible for direct transport aid.

## II. APPRECIATION

### 1. Notification requirement and standstill clause

Article 1(3) of Protocol 3 to the Surveillance and Court Agreement states: “*The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.*” Aid provided without notification or aid that is notified late, *i.e.* notified after being “put into effect” is considered unlawful aid, see Chapter 3.2.2.(1) of the State Aid Guidelines.

By letters from the Mission of Norway to the European Union dated 26 March 2003 (Doc. No. 03-1846 A), 15 April 2003 (Doc. No. 03-2467 A), 10 June 2003 (Doc. No. 03-3707 A) and 19 June 2003 (Doc. No. 03-3976 A), the Norwegian authorities have fulfilled their obligation according to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

### 2. The existence of State aid

#### • Article 61(1) EEA

Article 61(1) of the EEA Agreement reads as follows:

*“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”*

The EFTA Court stated in Case E-6/98<sup>11</sup>, paragraph 43, that: “*the Norwegian social security contribution scheme constitutes State aid within the meaning of Article 61 EEA*” For the purpose of assessing whether the notification of a transitional arrangement in zones 3 and 4 involves State aid, it is noted that the main principles of the scheme have not changed compared to the scheme assessed by the EFTA Court. As the present scheme satisfies all the conditions for the application of Article 61(1) EEA, the Authority takes the view that the transitional arrangement in zones 3 and 4 constitutes State aid.

Under the proposed new direct transport aid scheme, aid is provided by the Norwegian State to certain undertakings located in the regions of Norway eligible for transport aid. In view of the fact that the scheme is not limited to sectors or undertakings, which are not involved in trade between the EEA States, there is a risk that the aid distorts competition and affects trade between the Contracting Parties.

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<sup>11</sup> EFTA Court Case E-6/98, *The Government of Norway v EFTA Surveillance Authority* [1999] Report of the EFTA Court, p. 74.

Consequently, the proposed aid measure constitutes aid within the meaning of Article 61(1) of the EEA Agreement.

• **Existing aid or new aid?**

Chapter 7.2(1) of the State aid Guidelines states *i.a.* that: *“Existing aid within the meaning of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement includes: authorized aid, i.e. aid schemes or ongoing provisions of aid that have been authorized (see 4.2.(2) and 5.4.(2) or are deemed to have been authorized by the EFTA Surveillance Authority.”*

On 22 September 1999 the Authority decided not to raise objections to a notification from the Norwegian authorities concerning the measures that the Norwegian Government intended to take in order to comply with the EFTA Surveillance Authority’s decision of 2 July 1998<sup>12</sup>. The Authority found that the aid could be exempted as regional aid (indirect transport aid) on the basis of Article 61(3)(c) of the EEA Agreement. The approval was limited in time, not going beyond 31 December 2003. Consequently, the current regionally differentiated social security contributions scheme is an existing aid scheme until the end of 2003.

The Authority considers that any State aid resulting from the system of regionally differentiated social security contributions after 1 January 2004 would be new aid.

The proposed direct transport aid scheme is a new aid scheme.

**3. Compatibility of the aid.**

In the Decision to propose appropriate measures to Norway (Dec. No: 172/02/COL see also point I.2 above) the Authority concluded that the present regionally differentiated social contribution scheme did not qualify for the derogation provided for under Article 61(3)(c) EEA. The amount of aid granted under the present scheme does not bear any relation to the additional transport costs actually incurred by a particular undertaking and is not calculated in line with the provisions of Annex XI of the State Aid Guidelines.

**3.1 Transitional period in zones 3 and 4**

In point 1b) of the operative part of the Decision to propose appropriate measures to Norway (Dec. No: 172/02/COL, see also point I. 2 above), it is stated that: *“the Norwegian authorities shall eliminate any such aid or render it compatible with effect from 1.1.2004 unless the Authority agrees to a later date should that be considered objectively necessary and justified by the Authority in order to allow an appropriate transition for the undertakings in question to the adjusted situation.”*

In the notification (see point I 3.1 above), the Norwegian authorities have put forward two sets of arguments for why a transition period is necessary. Firstly, in light of the chronological development of the case, the Norwegian authorities are of the opinion that they received *“no clear signals”* until late autumn 2002 that the system as such had to be abolished. Secondly, it is argued that the economic effect of abolishing the

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<sup>12</sup> See footnote no 5.

system as from 2004 will raise significant and very serious difficulties, not only for individual firms, but for all firms (exceeding the *de minimis* threshold) and thus for the employment situation in the whole area.

- **Developments until late autumn 2002**

Referring to the facts summarised in point I 2 above concerning the Commission's negative decision with regard to Sweden, there is no question that the Norwegian authorities have known about the Commission's doubts concerning the compatibility of the Swedish scheme at the latest since the opening decision was published on 1 July 2000, and the Norwegian authorities have known that a negative decision was taken on 21 December 2000 at the latest since 14 September 2001. By letter dated 27 July 2000 the Norwegian authorities also submitted comments to the decision to initiate the formal investigation procedure. In this letter the Norwegian authorities confirmed that Norway operates a scheme that is similar to the Swedish scheme.

In the negative decision with regard to Sweden, the European Commission furthermore stated: *"The existence of a similar scheme in Norway (namely the regionally differentiated social security taxation scheme) is not a sufficient reason to approve the Swedish reduced social contributions scheme. In this context, the Court of Justice has ruled that 'any breach by a Member State of an obligation under the Treaty in connection with the prohibition laid down in Article 92 cannot be justified by the fact that other Member States are also failing to fulfill this obligation. The effects of more than one distortion of competition on trade between Member States do not cancel one another out but accumulate and the damaging consequences to the common market are increased'<sup>13</sup>".*

The Norwegian scheme was discussed in several meetings between the Norwegian authorities and the Authority in the course of 2001 before the Authority, by letter dated 29 November, informed the Norwegian authorities that the Authority would start an assessment of the Norwegian system with the aim of formulating a proposal for appropriate measures so that equal conditions of competition within the territory covered by the EEA Agreement are re-established.

The Authority initiated a formal review of the Norwegian system by letter to the Norwegian authorities dated 4 June 2002 (Doc. No: 02-4189 D). In this letter the Authority stated that the Norwegian system of regionally differentiated social security contributions might no longer be compatible with the EEA Agreement. In the Authority's decision to propose appropriate measures of 25 September 2002<sup>14</sup>, it was concluded that the present regionally differentiated social security contributions scheme does not qualify for the derogation provided for under Article 61(3)(c) EEA.

The aim of the discussions prior to 25 March 2003 was to see whether certain exceptions to a complete abolishment of differentiated social security contributions could be maintained. In the view of the Authority it was however clear, after the decision against Sweden, that the current system by and large could not continue.

<sup>13</sup> Case 78/76 *Steinike & Weinlig v Germany* [1977] ECR 595.

<sup>14</sup> Dec. No. 172/02/C OL.

Against this background, the Authority cannot agree with the Norwegian authorities that they received “no clear signals” until late autumn 2002 that the system as such had to be abolished. In light of the comments above the Authority is of the view that it would have been possible to take measures that would have alleviated transitional problems industry is now facing.

In any case, the Authority disputes the relevance of this argument. Whether the Norwegian Government received more or less clear signals is not decisive since a government cannot claim a misunderstanding of EEA rules as an excuse for not fulfilling its obligations under the Agreement. Thus, during discussions with the Norwegian authorities prior to 25 March 2003, the Authority took the view that a Member State cannot invoke legitimate expectations in order to continue an incompatible scheme. This is even more the case in the present situation where the authorisation of the present scheme will cease to exist by the end of 2003 and a new authorisation will be required in order to approve a new aid scheme.

• **The economic effect of an abolishment of the system**

The Norwegian authorities argue that no transitional period, or a very short one, would *i.e.* create uncertainty and crises in a large number of regional businesses and may severely hurt economic development in these regions. This is substantiated by arguments and calculations as described in point I 3.1 above.

In spite of this, the Authority still has doubts as to whether a transitional period can be justified on these grounds, and, if so, how long it objectively should be.

Firstly, the Norwegian authorities have not submitted calculations demonstrating the effects of transition periods of one and two years, respectively, for each of the zones, and compared to the notified three year period (as requested in the Authority’s letter dated 16 May 2003). In the letter dated 5 June 2003 from the Ministry of Finance, the Norwegian authorities only make comparisons between a transition period of three years and no transition period at all while stating that: *“a transition period of less than three years would be too short”*.

Secondly, in the letter dated 16 May 2003, the Authority requested arguments for why enterprises in zone 3 need the same transition period as those in zone 4, in spite of facing a smaller increase in the tax burden. In the letter dated 5 June 2003 from the Ministry of Finance, the Norwegian authorities state that: *“The relative differences between the two zones are very small compared with the need for wage adjustments in both zones. A differentiation of the transitional period between the two zones would in our view be unfortunate in the present situation.”*

• **Conclusion concerning the notified transitional period in zones 3 and 4**

Taking into consideration that any State aid resulting from the system of regionally differentiated social security contributions after 1 January 2004 would be new aid, that the Norwegian authorities, in the view of the Authority, have been aware for quite some time that the system as such could not continue and that the Authority has doubts about the economic justification for a transition period of three years in both zone 3 and 4, the Authority has doubts about the compatibility of the notified transitional period in zones 3 and 4.

### 3.2 A new direct transport aid scheme

The proposed areas eligible for direct transport aid cover municipalities in six counties. Of these six counties, four have a population density of less than 12,5 inhabitants per square kilometre. Four of the municipalities proposed eligible for direct transport aid are outside the regional aid map (Herøy, Ulstein, Hareid and Aukra).

- **Municipalities outside the regional aid map**

The Authority's authorization of the map of assisted areas for Norway in 1999 (327/99/COL) implied an endorsement of the granting of aid under approved regional aid schemes. It follows that regional aid (for example direct transport aid) cannot be granted outside the approved map of assisted areas.

In Chapter 25.5(5) of the State Aid Guidelines it is stated that: *"During the period of validity of the map, EFTA States may request adjustments to it, if it is shown that socio-economic conditions have changed significantly. Such changes may relate to the rates of intensity and the eligible regions, provided that the possible inclusion of new regions is offset by the exclusion of regions having the same population. The validity of the adjusted map expires on the date already set for the original map"*.

As the Norwegian authorities have not notified an adjustment of the map of assisted areas in accordance with Chapter 25.5(5) of the State Aid Guidelines, regional aid (direct transport aid) to the four municipalities outside the regional aid map (Herøy, Ulstein, Hareid and Aukra) would, in the view of the Authority, be incompatible with the State aid provisions of the EEA Agreement.

- **Documentation of additional transport costs**

As documentation of additional transport costs, the Norwegian authorities have submitted the survey from TØI (see point I 3.2 above).

In Chapter 25.4(27) of the State Aid Guidelines it is stated that: *"In the regions of low population density qualifying either for exemption under Article 61(3)(a) or under 61(3)(c) on the basis of the population density test referred to in Chapter 25.3, paragraph (17), aid intended partly to offset additional transport costs<sup>15</sup> may be authorised under special conditions<sup>16</sup>. It is up to the EFTA State to prove that such additional costs exist and to determine their amount."*

The Authority considers that the survey from TØI does not to a sufficient degree prove that additional transport costs exist in the geographical areas in southern

<sup>15</sup> *Additional transport costs mean the extra costs occasioned by movements of goods within the borders of the country concerned. In no circumstances may such aid constitute export aid, nor must it constitute measures having an equivalent effect to quantitative restrictions on imports, within the meaning of Article 11 of the EEA Agreement.*

<sup>16</sup> *With regard to the special conditions for regions qualifying for the Article 61(3)(c) derogation under the population density criterion, see Annex XI of the State Aid Guidelines. As for the other regions eligible for aid to offset in part additional transport costs, the conditions applicable are similar to those in Annex XI of the State Aid Guidelines."*

Norway proposed eligible for direct transport aid. Therefore the Authority has doubts about the compatibility of direct transport aid in these areas (Sogn og Fjordane, Møre og Romsdal and Sør-Trøndelag) with the State aid provisions of the EEA Agreement.

### **3.3 A continued differentiated social security contribution in Nord-Troms and Finnmark (zone 5)**

The Authority refers to Decision of the Standing Committee of the EFTA States No 2/2003/SC of 1 July 2003. Consequently, the formal investigation will be limited to the notified transitional arrangement in zones 3 and 4 and the direct transport aid scheme.

#### **4. Conclusion**

In view of the above facts and considerations, the Authority has doubts about the compatibility of the notified aid measures with the functioning of the EEA Agreement. Consequently, and in accordance with Chapter 5.2 of the State Aid Guidelines (cited in point II 1 above), the Authority is obliged to open the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement. The decision to open proceedings is without prejudice to the final decision, which may still be to find that the aid is compatible with the functioning of the EEA Agreement.

#### **HAS ADOPTED THIS DECISION:**

1. The Procedure provided for in Article 1 (2) of Protocol 3 to the Surveillance and Court Agreement is opened with regard to the notified transitional period for the regionally differentiated social security contributions in zones 3 and 4 and the notified new direct transport aid scheme.
2. The Norwegian Government is invited, pursuant to point 5.3.1.(1) of Chapter 5 of the Authority's State Aid Guidelines, to submit its comments on the opening of the formal investigation procedure within two months from the notification of this decision.
3. The Norwegian Government is requested to submit all information enabling the Authority to examine the compatibility of the measures in question with the EEA Agreement within two months from the notification of this decision.
4. Other EFTA States, EC Member States and interested parties shall be informed by the publishing of this decision in the EEA Section of the Official Journal of the European Union and the EEA Supplement thereto, inviting them to submit comments within one month from the date of publication.
5. This decision is authentic in the English language.



Done at Brussels, 16 July 2003,

For the EFTA Surveillance Authority

Einar M. Bull  
President

Hannes Hafstein  
College Member